

84-731

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Office-Supreme Court, U.S.

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ALEXANDER L. STEVAS,  
CLERK

NO.

IN THE  
Supreme Court of the United States

OCTOBER TERM, 1984

JOSEPH B. SHUMATE, JR., PETITIONER

v.

JAMES F. DOUTHAT, SUBSTITUTE TRUSTEE, ET AL

SUPPLEMENTAL APPENDIX FOR  
THE WRIT OF CERTIORARI

FOR THE FOURTH CIRCUIT

Donald E. Earls  
Counselor for Petitioner  
940 Park Avenue  
P.O. Box 710  
Norton, Virginia 24273  
(703) 679-3088

13/9/85



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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

JOSEPH B. SHUMATE, JR.,  
Plaintiff,

v.

JAMES F. DOUTHAT, NCNB FINANCIAL  
SERVICES, INC. and PULASKI FURNITURE  
CORPORATION,  
Defendants.

Civil Action No. 83-M-16 (R)

Abingdon, Virginia  
May 15, 1984  
2:17 O'Clock, P.M.

TRANSCRIPT OF BENCH OPINION  
BEFORE THE HONORABLE GLEN M. WILLIAMS

TRANSCRIPT ORDERED BY:

BENJAMIN C. ACKERLY, ESQUIRE  
(HUNTON & WILLIAMS)

APPEARANCES:

For The Plaintiff:

Jenkins & Quigley  
BY: MAX JENKINS, ESQUIRE  
P.C. Box 720  
Radford, Virginia 24141



For Defendant Douthat:

Woods, Rogers, Muse, Walker &  
Thornton

BY: WILLIAM B. POFF, ESQUIRE

P.O. Box 720

Roanoke, Virginia 24004

For Defendant NCNB Financial Services,  
Inc.:

Penn, Stuart, Eskridge & Jones

BY: STEPHEN M. HODGES, ESQUIRE

P.O. Box 749

Abingdon, Virginia 24210

For Defendant Pulaski Furniture  
Corporation:

Hunton & Williams

BY: BENJAMIN C. ACKERLY, ESQUIRE

P.O. Box 1535

Richmond, Virginia 24210





Court Reporter:

Robert C. Haumesser  
Official Court Reporter  
Western District of Virginia  
P.O. Box 924  
Abingdon, Virginia 24210

(Proceedings begun at 2:17 O'Clock, P.M.

(The case was called.)

(Mr. Jenkins made an opening statement.)

(Mr. Ackerly made an opening statement.)

(Mr. Ackerly presented defendant  
Pulaski Furniture's evidence.)

(Mr. Jenkins presented the plaintiff's  
evidence.)

(Mr. Ackerly, Mr. Hodges and Mr. Poff  
argued the bond.)

(Mr. Jenkins responded.)

(Thereupon, the Court rendered the  
following Bench Opinion.)

THE COURT: Gentlemen, the way the  
Court views this matter, of course, to  
go back just a little bit, uh, I never  
did rule one way or the other on the  
matter of a bond being made. I chose,  
instead, to expedite the trial and try



the case on the merits and see where we were and, of course, as you all know, I decided the case on the merits on it and therefore there wasn't -- it was never necessary for me to go into the matter of the plaintiff having to make a bond or not in order to originally file the suite or to go forward with it.

Now, obviously there is a potentially great loss. I think Mr. Hodges argument is correct that the bank has received two million dollars for the building portion or the real estate portion of it at least that. I'm not sure exactly how this was apportioned. But, at any rate, that was what the bid was made for.

Assuming that this sale, that the plaintiff would prevail on in this appeal and another sale would have to be gone through with, uh, any other bidder that might come into it would be in a



position of there being litigation over improvements or changes and so forth that would be in the building. It's very speculative as to what it might bring and Pulaski being in a position to rebid again might be in a position of wanting to bid very little in view of the situation would be that NCNB could be greatly harmed.

Now, it's not my desire to prevent anybody from appealing a case out of my court to a higher court. Far be it. And normally we don't have any bond except for a cost bond and that's all the Rules really provide for unless there is a Stay of Judgment in which case there's a Supersedeas Bond. But this is not a normal situation and I'm relying upon this Rule 8005 of the Bankruptcy Rules which reads that the Bankruptcy Court in which this case is



action for the Bankruptcy Court may suspend or order a continuance -- continuation of other proceedings in the case under the code or make other appropriate Order during the pendency of an Appeal on such terms as will protect the right of all parties in interest.

Now, assuming that this Court is acting under the powers of the District Court rather than the Bankruptcy Court, I am taking the position that this Court has inherent power beyond the Rules to protect the litigants, the public and everyone that can be eventually damaged as the result of continuing on with this matter and I feel that NCNB has potential damage. I feel that Pulaski has potential damage. Now, I'm mindful of what has been testified to here about a sale that's coming up and that this may bring three million dollars. My





decision is appealable as I would understand it. In other words, the Rules set out that a matter of Bond should be presented, first of all, to the District Court and the District Court should rule on it and you have an appellate right on the matter of the Court of Appeals reviewing the amount of the Bond.

I would also say this and this would be for the benefit of my view to be passed on to the Court of Appeals upon hearing any matter on this bond. That if Bond is not allowed that the Court of Appeals should have an expedited Appeal and hear this thing within the next thirty days for the protection of everybody.

Now, I doubt if it makes much difference to whether I set the Bond at five-hundred-thousand dollars or at two million in once sense of the word in



regard to the ability to make it, but in view of all the circumstances in this case, I am of the opinion that the two million dollars is a proper bond and for the reasons that I've said here that's what I'm setting as a Supersedeas Bond and I consider that without a Bond being made that great harm could come if this thing was allowed to go on for a year with nobody able to make any plans or anything at all. As a matter of fact, it's something that two million dollars conceivably not touch the losses that could be suffered here and that's my view on it and I want to enter an Order to that effect and counsel for the plaintiff will try to do so before you leave. I'm going on with this trial that I'm in. If you will get me an Order immediately on it and so that the plaintiff can, if he sees fit to appeal



this Order to the Court of Appeals on the matter of the Bond.

MR. JENKINS: Would the Court note our objections and exceptions.

THE COURT: Yes, sir.

MR. JENKINS: And that will be done today, Your Honor. I can stick around and we will do it.

THE COURT: Well, I guess you can go down to Mr. Hodges' Office and make it up, couldn't you, or if you can't, get somebody here locally?

MR. JENKINS: Yes, sir. I'll be back in approximately thirty minutes with it.

MR. HODGES: I don't know if we'll have it in thirty minutes, but we'll do it this afternoon.

MR. JENKINS: Thank you, Your Honor.

THE COURT: Well, we'll take about



a ten minute recess. If you'll notify the attorneys, they can be getting set up.

(Proceedings concluded at 3:31 O'Clock, P.M.)

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I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

|| Robert C. Hannessey

5/16/84

\* \* \* \* \*





I, Donald E. Earls, do hereby  
certify that I have this 21st day of  
November, 1984, mailed a true copy of  
the foregoing Supplemental Appendix for  
Writ of Certiorari to the persons list-  
ed below.

Benjamin C. Ackerly, Esquire  
Hunton & Williams  
P.O. Box 1535  
Richmond, Virginia 23212

George V. Hanna, III, Esquire  
Moore, Van Allen and Allen  
300 NCNB Plaza  
Charlotte, NC 28280

Stephen M. Hodges, Esquire  
Penn, Stuart, Eskridge & Jones  
P.O. Box 749  
Abingdon, Virginia 24210

William B. Poff, Esquire  
Woods, Rogers, Muse, Walker & Thornton  
P.O. Box 720  
Roanoke, Virginia 24004